

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**NESTOR G. CABALLERO-  
GUTIERREZ,**

Petitioner,

v.

**JEFF PREMO,**

Respondent.

No. 6:16-cv-00813-AC

OPINION AND ORDER

**MOSMAN, J.,**

On September 1, 2020, Magistrate Judge John V. Acosta issued his Findings and Recommendation (F&R) [ECF 42]. Judge Acosta recommended that I DENY Petitioner's Petition for Writ of Habeas Corpus [ECF 2] and decline to issue a Certificate of Appealability. Petitioner Nestor G. Caballero-Gutierrez filed objections [ECF 44] and Respondent Jeff Premo filed a response [ECF 45]. Upon review, I agree with Judge Acosta and DISMISS this case with prejudice.

**DISCUSSION**


The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or

recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Acosta's recommendation and I ADOPT the F&R [ECF 42] as my own opinion. Mr. Caballero-Gutierrez's Petition for Writ of Habeas Corpus [ECF 2] is DENIED and I decline to issue a Certificate of Appealability. The case is DISMISSED with prejudice.

IT IS SO ORDERED.

DATED this 29 day of October, 2020.

  
MICHAEL W. MOSMAN  
United States District Judge